CHAPTER 6
APPEAL PROCEDURES
[Prior to 9/7/88, see Public Instruction Department[670] Ch 51]

281—6.1(256) Definitions.

"Appellant," as used in this chapter, shall refer to a party bringing an appeal to the state board of education, the director of education or the department of education.

"Appellee," as used in this chapter, shall refer to the party in a matter against whom an appeal is taken, or the party whose interest is adverse to the reversal of a prior decision now on appeal to the state board of education, the director of education or the department of education.

"Board," as used in this chapter, shall refer to the state board of education.

"Director," as used in this chapter, shall refer to the director of education.

"Hearing panel," as used in this chapter, shall refer to the director of education, or the director's designee sitting as the administrative law judge and two members of the department of education staff designated by the administrative law judge to hear the presentation of evidence and oral arguments concerning appeals.

281—6.2(290) Type of appeal. The rules of this chapter are applicable to all hearing requests seeking appellate review by the state board of education, the director of education, or the department of education.

281—6.3(290,17A) Manner of appeal.

6.3(1) An appeal shall be made in the form of an affidavit, unless an affidavit is not required by the statute establishing the right of appeal, which shall set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and which shall be signed by the appellant and delivered to the office of the director by United States Postal Service or personal service. The affidavit shall be considered as filed with the agency on the date of the United States Postal Service postmark or the date personal service is made. Delivery of the affidavit or other request for appeal shall not be made by facsimile (fax). Time shall be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) The director or designee shall, within five days after the filing of such affidavit, notify the proper officer in writing of the taking of an appeal, and the officer shall, within ten days, file with the board a complete certified transcript of the record and proceedings related to the decision appealed. A certified copy of the minutes of the meeting of the governmental body making the decision appealed shall satisfy this requirement.

6.3(3) The director or designee shall send written notice by certified mail, return receipt requested, at least ten days prior to the hearing, unless the ten-day period is waived by all parties, to all persons known to be interested. Such notice shall include the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. A copy of the appeal hearing rules shall be included with the notice.

6.3(4) A request for continuance may be made to the administrative law judge upon reasonable cause.

6.3(5) Continuances may be granted upon the sole discretion of the administrative law judge.

6.3(6) An amendment to the affidavit of appeal may be made by the appellant up to ten working days prior to the hearing. With the agreement of all parties, an amendment may be made until the hearing is closed to the receipt of evidence.

281—6.4(290) Subpoena of witnesses and costs.

6.4(1) The director, on behalf of the board, has the power to issue subpoenas for witnesses, to compel the attendance of those witnesses, and the giving of evidence by them, in the same manner and to the same extent as the district court may do. An agency subpoena shall be issued to a party on written

request made at least ten days prior to the hearing. Parties are responsible for obtaining service of their own subpoenas.

6.4(2) Witnesses and serving officers may be allowed the same compensation as is paid for like attendance or service in district court. The witness's fees and mileage are considered costs of the appeal under Iowa Code section 290.4; costs are assigned to the nonprevailing party. The witness's fees and expenses for hearings brought under other statutes and rules are the responsibility of the party requesting or subpoenaing the witness.

6.4(3) If the board is of the opinion that the proceedings were instituted without reasonable cause, or if an appeal is not sustained, it shall enter these findings in the record and tax all costs, including witness and service fees, to the party responsible. A transcript shall be filed in the office of the clerk of the district court of the district in which the controversy arose.

281—6.5(17A) Discovery. Discovery procedures applicable to civil actions are available to all parties in contested cases before the department. Evidence obtained in discovery may be used in the hearing before the department if that evidence would otherwise be admissible in the hearing.

Any deviations from the time periods established for compliance with discovery in the Iowa Rules of Civil Procedure shall be determined by the administrative law judge upon opportunity for all parties to be heard.

281—6.6(17A) Consolidation—severance.

6.6(1) *Consolidation.* The administrative law judge may consolidate any or all matters at issue in two or more appeals where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties of those proceedings.

6.6(2) *Severance*. The administrative law judge may, for good cause shown, order any contested case proceedings or portions thereof severed.

281—6.7(17A) Participants in the hearing.

6.7(1) The hearing shall be conducted by the administrative law judge. The director or the director's designee shall serve as administrative law judge.

6.7(2) The appellant or appellant's representative and the appellee or the appellee's representative shall be heard. Third parties or their representatives may be heard at the discretion of the administrative law judge.

281—6.8(17A) Appeal hearing.

6.8(1) *On stipulated record.* Upon the written agreement of the parties, the transcript of the record and proceedings as certified by the proper official and any other documents mutually stipulated may become the evidentiary basis for the hearing on appeal. In the event that the hearing is to be conducted on the stipulated record, the following procedures shall be followed:

a. At the established time, the name and nature of the case are announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

b. When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the hearing may proceed. When any absent party has been properly notified, this fact shall be entered into the record. When notice to an absent party has been sent by certified mail, return requested, the return shall be placed in the record. If the notice was sent in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

c. The appeal hearing on stipulated record is nonevidentiary in nature. No witnesses will be heard nor evidence received. The controversy will be decided on the basis of the stipulated record and

the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceedings.

d. Illustrative materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

e. Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

f. The appellant shall present the first argument. The appellee shall follow with argument and rebuttal of the appellant's argument. A third party who was a party in the initial proceeding but not either appellant or appellee may, at the discretion of the administrative law judge, be allowed to make remarks. The appellant may then rebut the proceeding arguments but may not introduce new arguments.

g. Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit for argument shall be established by the administrative law judge and shall in most instances be limited to 30 minutes for each party.

h. At the conclusion of arguments, each party shall have the opportunity to submit written briefs or arguments, or additional written briefs if they have already done so. Any party submitting a written brief or argument must deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by any party and shall be entered into the record.

i. The appeal hearing is then closed upon order of the administrative law judge.

6.8(2) *Evidentiary hearing.* When the parties do not agree to a stipulated record, the following procedure shall be followed:

a. The appellant may begin by giving an opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence the appellant proposes to introduce and the conclusions which the appellant believes the evidence will substantiate.

b. With the permission of the administrative law judge, a third party directly involved in the original proceeding but neither appellant nor appellee may make an opening statement of a general nature.

c. The appellee may present an opening statement of a general nature which may include the type and nature of evidence proposed to be introduced and the conclusions which the appellee believes the evidence will substantiate. The appellee may present an opening statement following the appellant's opening statement, if any, or may reserve opening for immediately prior to its case-in-chief.

d. The appellant may then call witnesses and present other evidence.

e. Each witness shall be administered an oath by the administrative law judge. The oath shall be in the following form: "Do you solemnly swear or affirm that the testimony or evidence which you are about to give in the proceeding now in hearing shall be the truth, the whole truth, and nothing but the truth?"

f. The appellee may cross-examine all witnesses and may examine and question all other evidence.

g. Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

h. The hearing panel members may address questions to each witness at the conclusion of questioning by the appellant and the appellee.

i. At the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

j. The appellant shall make a final argument for a length of time established by the administrative law judge, in which the appellant may review the evidence presented, the conclusions which the appellant believes most logically follow from the evidence and a recommendation of action to the hearing panel.

k. The appellee may make a final argument for a period of time equal to that granted to the appellant in which the appellee may review the evidence presented, the conclusions which the appellee believes most logically follow from the evidence and a recommendation of action to the hearing panel.

l. At the discretion of the administrative law judge, a third party directly involved in the original proceeding but neither the appellant nor appellee may make a final argument.

m. At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

n. Any party may submit written briefs. Written briefs by nonparties may be accepted at the discretion of the administrative law judge. Any party submitting a written brief or argument shall deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief or argument at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by a party and the waiver shall be entered into the record.

o. Rules of evidence.

(1) Because the administrative law judge must decide each case correctly as to the parties before the panel and the administrative law judge must also decide what is in the public's best interest, it is necessary to allow for the reception of all relevant evidence which will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative, and relevant.

(2) Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The hearing panel shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(4) Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

(5) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the hearing panel. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced.

(6) The hearing panel's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(7) No decision shall be made except upon consideration of the whole record or portions that may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

6.8(3) *Telephone hearings.* Upon agreement of the parties, a hearing may take place by telephone conference call.

281—6.9(17A) Communications.

6.9(1) Except when parties who have received notice are absent from proceedings, hearing panel and board members shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate. However, hearing panel and board members may communicate with staff members of the department and may have the aid and advice of persons other than those with a personal interest in, or those directly engaged in prosecuting or advocating in either the case under consideration or a similar case pending involving the same parties.

6.9(2) Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the hearing panel or board members except upon notice and opportunity for all parties to participate, as are provided for by department rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

6.9(3) Any or all of the following sanctions may be imposed upon a party who violates the rules: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

281—6.10(17A) Record.

6.10(1) Upon the request of any party, oral proceedings in whole or in part shall be either transcribed, if recorded by certified shorthand reporters, or copied if recorded by mechanical means, with the expense for the transcription of copies charged to the requesting party.

6.10(2) All recordings, stenographic notes or transcriptions of oral proceedings shall be maintained and preserved by the department for at least five years from the date of a decision.

6.10(3) The record of a hearing under these rules shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of matters officially noticed.

d. All questions and offers of proof, objections, and rulings thereon.

e. All proposed findings of fact and conclusions of law.

f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—6.11(290,17A) Decision and review.

6.11(1) The administrative law judge, after due consideration of the record and the arguments presented, and with the advice and counsel of the staff members, shall make a decision on the appeal. Unless the parties are eligible to and agree to waive their right to a written decision approved by the director or state board of education pursuant to subrule 6.11(7), the proposed decision shall be mailed to the parties or their representatives by regular mail.

6.11(2) The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.

6.11(3) The decision of the administrative law judge shall be placed on the agenda of the next regular board meeting for review of the record and decision unless the decision is issued orally at hearing under subrule 6.11(7) or unless the decision is within the province of the director to make.

6.11(4) The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee.

6.11(5) Copies of the final decision shall be sent to the parties or their representatives by regular mail within five days after state board action, if required, on the proposed decision.

6.11(6) No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing, or a pending related matter involving the same parties.

6.11(7) In an appeal from the denial of a parent's or guardian's request for open enrollment, where the denial was for missing the deadline for filing for open enrollment without good cause for being late, the parties to the appeal may request that the administrative law judge issue an oral decision on the merits of the case at the conclusion of the hearing. An agreement by the parties to waive their right to a written decision reviewed by the director or state board in favor of an oral decision after the hearing may be rescinded by either party if a request is submitted in writing and mailed or delivered in person to the administrative law judge with 30 days following the hearing. A written decision will not be expe-

dited but will be issued at a later date in sequence with other written decisions in the order in which the case was heard.

A request to waive a written decision shall not be granted by the administrative law judge if the issue in the case is an issue of first impression or is not substantially similar to the issue decided by the state board or director which serves as precedent to the administrative law judge.

281—6.12(290) Finality of decision. The decision is final upon board approval of the administrative law judge's decision.

281—6.13(17A) Application for rehearing of final decision. Any party may file an application for rehearing with the administrative law judge stating the specific grounds therefor, and the relief sought, within 20 days after the issuance of any final decision by the board. A copy of the application shall be timely mailed by the department to all parties of record not joining therein. Such application for rehearing shall be deemed to have been denied unless the board grants the application within 20 days after its filing.

281—6.14(17A) Rehearing.

6.14(1) In the event the board directs a rehearing, the hearing panel, in arriving at a subsequent decision, may either review the record and arguments, or may proceed with either a full or partial hearing under the appeal hearing provisions of this chapter.

6.14(2) Following the rehearing, the administrative law judge shall place the proposed decision on the agenda of the next regular board meeting for review of the record and decision as provided for in 6.11(290,17A).

These rules are intended to implement Iowa Code sections 17A.11 to 17A.17, 256.7(6), 275.16, 282.18, 282.18(5) as amended by 1994 Iowa Acts, chapter 1175, section 10, 282.32, 285.12, and Iowa Code chapter 290.

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